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## Repeal of Constitutional Provision Requiring Elected Superintendent of Public Instruction (State Measure No. 1)

City Club of Portland (Portland, Or.)

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REPORT ON  
REPEAL OF CONSTITUTIONAL PROVISION REQUIRING ELECTED  
SUPERINTENDENT OF PUBLIC INSTRUCTION  
(STATE MEASURE NO. 1)

Purpose: "This measure proposes repeal of section 1, Article VIII of the Oregon Constitution, which states that the Governor shall be Superintendent of Public Instruction but that a law may be passed requiring the Superintendent to be elected. Such a law exists. If this measure passes, Oregon Laws 1979, chapter 713 will also go into effect, which will require the Superintendent of Public Instruction to be appointed by the Governor subject to confirmation by the Senate."

To the Board of Governors,  
The City Club of Portland:

I. INTRODUCTION

State Ballot Measure No. 1, to be voted upon at the November 4, 1980 general election, would repeal Article VIII, Section 1 of the Oregon Constitution. Those who favor appointment of the superintendent of public instruction should vote for this Measure. The office cannot be appointive unless this constitutional amendment is approved. Those who believe the office should remain elective should vote against this Measure.

II. BACKGROUND

The superintendent of public instruction is the chief administrative officer of the state board and the executive head of the state department of education. In general, the state board of education is charged with responsibility for establishing policy at the state level for the administration and operation of the primary and secondary public schools. Local boards are in direct control of individual school districts. The state board of education consists of seven members appointed by the Governor for four year terms. One member must be appointed from each congressional district with the remainder from the state at large. The appointments are subject to confirmation by the Senate. The board members may not be engaged in teaching nor participate in the administration of any school.

At one time county school superintendents were elected by the people but this practice was later changed. School district superintendents and the chancellor of the state board of higher education are appointed by their respective boards. At the federal level the comparable office of secretary of education is appointive.

Article VIII, Section 1 was a part of the original Oregon Constitution. It provided as follows:

"The Governor shall be superintendent of public instruction, and his powers, and duties in that capacity shall be such as may be prescribed by law; but after the term of five years from the adoption of this Constitution, it shall be competent for the Legislative Assembly to provide by law for the election of a superintendent, to provide for his compensation, and prescribe his power and duties."

Following the adoption of the Constitution, four Governors acted as superintendent until 1872 when the legislature provided for the election of a superintendent. From 1874 to 1960, Oregon superintendents were elected by the people every four years.

In 1960 then-Superintendent Rex Putnam, who had been re-elected to his sixth term of office in 1958, resigned. The Governor appointed Leon P. Minear in January 1961 to fill the unexpired term of Putnam, which lasted until January 1963.

Also in 1961, the legislature passed a law, Oregon Laws 1961, Chapter 624, which provided for the "election" of the superintendent of public instruction by the state board of education. Because of the newly passed law, no popular election for superintendent was held in 1962. Therefore, upon the expiration of his appointment in January 1963, Minear continued in office under the provision of Article XV, Section 1 of the Oregon Constitution which provides that all officers except members of the Legislative Assembly serve until their successors are elected and qualified.

In the spring of 1965, State Senator Ben Musa initiated litigation challenging the right of Minear to hold office as superintendent of public instruction. Musa argued that the Constitutional provision for the election of the Superintendent meant an election by the voters. In State ex rel Musa v Minear, 240 OR 315 (1965), the Oregon Supreme Court held that Article VIII, Section 1 of the Oregon Constitution required that the superintendent be elected by the people, that the 1961 statute was therefore unconstitutional, but that Minear would continue to hold the office until his successor was elected.

After the Supreme Court decision, the legislature, which was still in session, adopted a proposed constitutional amendment to repeal the provision requiring that the superintendent of public instruction be elected by the people. This was designed to permit the legislature to determine the method of selecting the superintendent of public instruction. The legislature also enacted Oregon Laws 1965, Chapter 519, which provided that the state board of education would appoint the superintendent if the people adopted the constitutional amendment, but that the superintendent should be elected if the people rejected the constitutional amendment. The Measure identified as State Ballot Measure 2 was voted upon at the May 24, 1966 primary election. The City Club recommended passage but the Measure was rejected by the voters.

The issue was again referred to the voters by the 1979 Legislative Assembly. If Measure 1 is approved by the voters, Oregon Laws 1979, Chapter 713 will go into effect which provides that the superintendent of public instruction shall be appointed by the governor for a term of four years. The governor's appointee must be from a list of nominees submitted by the state board of education and the appointee must be confirmed by the senate. The superintendent could be removed from office by the governor on the recommendation of the state board of education. The elective office would become vacant on December 31, 1982, and the first appointed superintendent could take office on January 1, 1983.

Oregon statutes define the duties and responsibilities of the superintendent of public instruction and the state board of education. The superintendent is assigned broad duties under ORS 326.310 which states in part "the Superintendent of Public Instruction shall exercise,

under the direction of the state Board of Education, a general superintendence of school officers and the public schools."

Specific duties assigned by statute to the superintendent of Public Instruction include acting as administrative officer of the state board of education and as the executive head of the department of education, assisting the public school system throughout the state in properly administering state educational laws and rules, appointing personnel as necessary for the performance of duties of the office and performing other functions as may be necessary to performance of the duties prescribed by the law.

The statutes describe the duties of the state board which include establishing policies for the administration and operation of the public schools in the state and in carrying out other duties prescribed by law. State statutes assign a policy-making role to the board while the superintendent is charged with implementing and administering board policies.

Specific board functions prescribed by statute include establishing state standards for public kindergarten, elementary and secondary schools in the state, adopting rules for the general governance of the public schools, prescribing required or minimum courses of study and adopting rules regarding school and inter-school activities. The board is also authorized to apply for and accept federal funds for educational purposes.

### III. ARGUMENTS ADVANCED IN FAVOR OF THE MEASURE

The following arguments were advanced in favor of Measure 1 in testimony before your Committee:

1. The state board of education is responsible for establishing educational policies while the state superintendent is responsible for implementing these policies. If both the board and the state superintendent were appointed by the governor, the lines of authority would be much more clear than under the current system in which the superintendent serves two masters -- the board and the electorate.

2. If the state superintendent were appointed by the governor, the board members would participate in screening candidates and recommending nominees. This could increase the probability of selecting a superintendent who is compatible with the board.

3. The superintendent should be responsible for implementing board policy, not campaign promises or a personal agenda.

4. Direct accountability of the superintendent to the voters is not necessary. Makers of state policy are already held accountable through legislative control of the Department of Education's budget and through control of the senate over appointments to the board of education. In turn, legislators are held accountable by the voters.

5. An appointed state superintendent would be free from campaigning every four years, a process which hinders administrative performance.

6. An appointed state superintendent would be free of the risk of being unduly influenced by various interest groups during an election.

7. The appointive process allows consideration of all professionally qualified candidates. The elective process limits the field to candidates who have the time and the financial resources for a campaign.

8. The ability to win an election should not be one of the requirements for a professional administrator such as the state superintendent.

9. An appointed superintendent who is not performing as expected is easier to remove from office than an elected one.

10. Other state departments function well with an appointed chief administrator. There is no reason to expect this would not be the case with the Department of Education.

#### IV. ARGUMENTS ADVANCED AGAINST THE MEASURE

1. Either the state board of education or the state superintendent of public instruction should be elected so that the public has some direct control over public education. Since the board members are not elected, the state superintendent should be.

2. An elected superintendent has the political base and therefore the freedom to offer independent views to the state board, legislature or governor, whether these views are popular or not in such quarters. The superintendent thus can act as a check or balance in relation to the state board of education, the governor and the legislature.

3. Running for office forces the candidates for state superintendent to learn what educational policies and programs Oregonians prefer. An appointed superintendent does not have this incentive to communicate with a broad range of people.

4. Election of major state officials preserves the democratic process.

5. Because of the large amount of state and local funds spent on education, and because of the high priority our society places on education, the position of state superintendent of public instruction appears more important than similar positions in other public service systems. Therefore it is important that the state superintendent be elected.

6. Oregon's state superintendent has always been elected, except for a limited time in the early 1960's, and the quality of education has never suffered under this system.

7. As an elected official, the superintendent can focus greater public attention on educational issues.

8. The election process itself gives visibility and weight to educational issues.

9. An elected superintendent has more power and influence in dealing with the legislature.

#### V. DISCUSSION

The debate over the election or appointment of the state superintendent of public instruction is largely philosophical. Measure 1 was born out of a conviction that a different system would better serve the state, not out of a need to solve a crisis.

The discussion chiefly centers around two questions: Can the Department of Education be led effectively when its executive is accountable to both the board, which sets policy, and the voters and is election or appointment more likely to bring the best talent to the position?

##### A. Accountability for Policy Making

Some proponents of a change in the system--especially those who advocated the package originally brought before the 1979 Legislative Assembly--argue that the state board of education, not the superin-

tendent, should be elected, because the board is the true policy-maker. Those proponents say that to elect a superintendent who only carries out the will of the board, is in reality giving the people no real voice in state education policy.

The proposal originally introduced in the 1979 legislature at the request of the Oregon Education Association, envisioned an appointed superintendent and an elected board. Although provisions for an elected board did not emerge from the legislative process as a feature of Measure 1, this issue frequently arose in interviews by your Committee, and is relevant to the current discussion because it raises the matter of the accountability of state educational policy makers to the voters.

While on the surface the idea of electing the policy-makers is attractive and sensible, opponents raise a number of strong arguments against it. For example, board members receive no pay and have no incentive to bear the burden of a campaign. This raises the fear among opponents that special interest groups might emerge with undue influence on the state board should candidates have to seek the money and volunteers necessary to run for office.

If the superintendent as well as the board were appointed, who would be directly accountable to the electorate for state education policy? No one, argue those who favor election of the superintendent. Even if he is not the ultimate authority, they say, the superintendent nevertheless has discretionary power in a number of areas, and as an elected official can act as an independent voice in the formulation and implementation of state educational policy.

In addition, the campaign process brings the superintendent (or would-be superintendent) into contact with a variety of people throughout the state, something a professional administrator might not be inclined to do if he served only at the pleasure of the governor and the board.

The election of a superintendent, proponents argue, also provides an opportunity for statewide discussion of major education issues--at least every four years. And the electoral process gives the office of superintendent (and thus education affairs) greater public visibility and attention. Although he does not have the power to set policy, the way in which the superintendent raises issues in public can effect the shape of the policies eventually adopted.

Proponents of an appointed superintendency say the system of accountability to the governor and legislature that works for all other state agencies is sufficient for the Department of Education as well.

Most persons interviewed by your Committee stressed the point that Oregon has a very open system of education, and that the public already has considerable ability to influence the shape and course of education.

While certain policies and standards may be set statewide, local school boards are responsible for the operation of their own school districts. The election of local school boards and the array of advisory committees, budget committees, and other groups gives citizens adequate opportunities to influence the course of education where it most vitally interests them--the schools their own children attend.

Advocates of an appointed superintendency also fear that the current system could result in damaging conflict between elected superintendent and appointed board. For example, a superintendent could be elected on a platform advocating policies he has no authority to require the board to adopt. Should the board, then, disagree with those policies and establish others, the stage could be set for a clash between the superintendent's "mandate" from the electorate and the board's statutory power to set policy.

This raises the point that the elected superintendent serves "two masters"-- the voters who elected him and the board to whom he reports and from whom he takes his day-to-day direction.

While most persons interviewed said there may be value, in any decision-making organization, to a certain "creative tension" between parties, some added that it is not clear that this force would of necessity be absent in a system in which both superintendent and board were appointed.

Oregon has a long history of honest, conscientious elected officials, and the state superintendents have been no exception. For the most part, there have been no instances of serious public conflict between superintendent and board over major policy. However, a dispute did arise in 1968 between the superintendent and board over who had the power to adopt rules governing public schools. The Oregon Supreme Court ruled the board had the power.

Nevertheless, an elected superintendent could frustrate the will of the board and disrupt the state education operation. Although the superintendent's duties are defined under the umbrella of administrative responsibilities, the statutes grant the superintendent broad discretion in carrying out the responsibilities assigned by law. Interviews by your Committee indicate that the relationship between the board and superintendent is not as well defined in practice as it is under the statutes. The superintendent actually plays a strong role in developing policy with the board and also has the authority under administrative rules to interpret policy or set administrative precedents in areas where board policy is lacking or unclear.

Interviews with various witnesses indicate that the present relationship between the board and superintendent necessitates that the board work very hard to maintain a positive, productive relationship. The present system necessitates that the board closely follow the superintendent's administrative decisions to insure that the intent of board policies is in fact being implemented. The superintendent's authority to make all administrative and budgetary decisions within the Department of Education at times contradicts the objectives and interest of the board. Under the present system, some witnesses argued, the superintendent has enough political independence to sometimes disregard board objections to administrative decisions and policy interpretations.

#### B. Finding the Best Qualified Candidate

The qualities desirable in a state superintendent also received considerable attention before your Committee. Most proponents of an appointed superintendency do not argue that past office-holders have done anything to damage education in the state. However, they claim it is

more desirable to have an experienced professional as superintendent, free of political obligations, who directly implements board policy.

The growing number of federal regulations and the increasingly technical nature of education today call for officials--most particularly the state superintendent--who are above all else professional, efficient administrators. These qualities are not always likely to be visible to the public in an election campaign. Indeed, it could be argued that the very matters over which the state superintendent exercises greatest control--such as federal grants and local compliance with state standards--are unlikely to be raised in the course of an election campaign.

There has been a trend in recent years away from electing chief state school officers. Currently, the chief state school officer is appointed by the state board of education in twenty-seven states. In five others, the superintendent is appointed by the governor and in eighteen states (including Oregon), he is elected by the people.

#### VI. MAJORITY CONCLUSION

The Majority of your Committee has not found convincing evidence that the office of state superintendent is sufficiently different from any other department-level position in state government to justify election.

The system of electing a superintendent forces the incumbent (if seeking re-election) to spend time campaigning, while counterparts in other state agencies are able to devote full time to their duties.

The state pays a superintendent to administer a large and complex department, not make policy or act as a lightning rod for educational issues.

The Majority does not agree with the argument that only an elected superintendent has the latitude to offer independent advice on educational issues. Nor does the Majority believe that a superintendent will get out and meet people and listen to their views only during an election campaign.

While the Majority feels that the superintendent should be an effective statewide voice for education, it does not believe that an elected superintendent necessarily will have more clout with the Legislature or will always be able to focus public attention on education issues better than an appointed official.

In short, the Majority of your Committee sees no compelling reason to elect an official whose basic duty is to administer the policies set by other people.

Furthermore, it seems that the answer to many perceived or potential problems in either system (elective or appointive) is to have a strong, professional administrator in the office of superintendent.

The Majority believes that that goal can best be met through a system of appointment in which candidates for the office are considered primarily for their administrative merits.



## VII. MAJORITY RECOMMENDATION

The Majority of your Committee urges a YES vote on Measure 1 at the November, 1980 election.

Respectfully submitted,

George L. Benson  
James W. Durham, Jr.  
Richard P. Hutchison  
Jean McMahon  
Robert P. Michelet, Chairman  
FOR THE MAJORITY

## VIII. MINORITY CONCLUSION

No evidence was presented to the Committee that state agencies with appointed administrators and appointed boards function more efficiently or are more responsive to the public than are agencies with elected administrators or boards.

While the election process does not insure public participation, it does make such participation possible.

This Measure originally provided for the election of the board of education as a check to the performance of an appointed superintendent. This provision was deleted by the legislature.

Before the system is changed by the voters, the Measure should again be considered by the legislature with the objective of providing direct public participation in the selection of those who make state education policy. Because such public participation is not provided for in the Measure under consideration, the Measure should not be supported.

## IX. MINORITY RECOMMENDATION

The Minority of your Committee recommends a NO vote on Measure 1 at the November election.

Respectfully submitted,

Molly Smith  
FOR THE MINORITY

Approved for publication by the Research Board on August 21, 1980 and authorized by the Board of Governors for distribution to the membership for discussion and action on Friday, September 26, 1980.

## APPENDIX A

## PERSONS INTERVIEWED

Jim Chrest, State Representative, District No. 15  
John Danielson, Lobbyist, Oregon Education Association  
Christopher Dudley, Director, Legislative Services, Oregon School Boards Association  
Verne Duncan, State Superintendent of Public Instruction  
Ruth McFarland, Instructor, Mt. Hood Community College, and a candidate for State Superintendent of Public Instruction in 1978  
Terry Olson, Executive Director, Oregon Educational Coordinating Commission  
Dale Parnell, President, San Joaquin Delta Community College and a former Oregon State Superintendent of Public Instruction  
June Pihls and Marilyn Stoller, officials, State Parent/Teachers Association  
Nancy Ryles, State Representative, District No. 5  
Wanda Silverman, Member and past Chairman, State Board of Education.

## APPENDIX B

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